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CLERK OF THE COURT

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

**STATE OF TENNESSEE, ex rel.  
ROBERT E. COOPER, JR.,  
Attorney General and Reporter,**

**Plaintiff,**

**v.**

**DIRECTORY BILLING, LLC,  
a Florida Limited Liability company  
d/b/a DIRECTORY BILLING  
and d/b/a USDIRECTORY.COM**

**Defendant.**

**Case No. 080059**

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**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

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This civil law enforcement action is brought in the name of the State of Tennessee through Robert E. Cooper, Jr. (hereinafter "Plaintiff"), pursuant to Tenn. Code Ann. § 47-18-114 and Tenn. Code Ann. § 47-18-108(a)(1), at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). Plaintiff alleges that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* and that this action is in the public interest.

**I. PARTIES**

1. Plaintiff, the State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the Tennessee Consumer Protection Act of 1977 ("TCPA"), Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits unfair or deceptive acts or practices affecting trade or commerce. Per Tenn. Code Ann. § 47-18-108(a)(1), the Attorney

General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA, and to secure equitable and other relief as may be appropriate in each case. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1), the Division of Consumer Affairs has requested this lawsuit to be commenced.

2. Directory Billing, LLC, ("Directory Billing" or "Defendant") is a Florida limited liability company domiciled in the State of Florida and doing business as Directory Billing and as USDirectory.Com. Directory Billing's principal place of business is 999 West Yamato Road, Suite 100, Boca Raton, FL 33431. The company's registered agent in Florida is Robert J. Bogdanoff, who may be served with process on its behalf at the same address. The business of Directory Billing may be generally described as operating an Internet yellow pages website and selling Internet advertising services which provide an enhanced listing on its yellow pages website, www.USDirectory.Com. Directory Billing transacts business in the State of Tennessee by soliciting sales of its Internet advertising services and by causing residents within the State of Tennessee to be billed for the same.

3. Any act of Directory Billing, as alleged in this Complaint, includes the acts of one or more of its managing members, officers, employees, agents, representatives or others acting on its behalf and at its direction, including, but not limited to, its independent contractors and consultants.

## **II. VENUE**

4. Venue lies in the Circuit Court of Davidson County under the provisions of Tenn. Code Ann. § 47-18-108(a)(3). The alleged unlawful practices have occurred in Davidson County as further described herein.

### **III. JURISDICTION**

5. The Circuit Court has jurisdiction of this action pursuant to Tenn. Code Ann. §47-18-108, which allows the Attorney General to seek injunctive relief, restitution, and penalties in courts of competent jurisdiction, including circuit courts, for violations of the TCPA.

### **IV. GENERAL FACTUAL ALLEGATIONS**

6. Upon information and belief, the State of Tennessee generally alleges as follows:

Directory Billing engaged in a deceptive scheme to sign small businesses, franchisees of large businesses, churches, and other entities up unknowingly for an online yellow page advertising service using checks. The checks Directory Billing used were live checks with a small face value that upon endorsement obligated the person or entity who cashed it to be billed as much as \$49.95 per month for advertising.

### **V. SPECIFIC ALLEGATIONS REGARDING DEFENDANT'S BUSINESS PRACTICES**

#### **On-Line Yellow Pages**

Upon information and belief, the State of Tennessee specifically alleges as follows:

7. Directory Billing is the publisher of a national Internet Yellow Pages located at the URL [www.USDirectory.Com](http://www.USDirectory.Com).

8. Directory Billing's on-line yellow pages contain business listings including business and organization names, addresses and telephone numbers they have purchased or procured from various other sources.

9. In addition to Directory Billing's standard business listings, the on-line yellow pages contain enhanced listings which reflect Directory Billing's Internet Preferred Business

Listings or "PBL's." These purportedly enhanced listings purport to provide a "preferred status" for the listing and link that listing to a separate web page which may contain additional information about the business or organization and a map.

10. The PBL is Directory Billing's principal product or service, and sales of PBL's constitute Directory Billing's principal source of revenue.

### **The "Activation Check" Solicitation**

11. For a period of time, Directory Billing's principal method of advertising and selling PBL's was through the use of an "activation check" in a direct mail solicitation mailed to prospective customers, consumers or persons as defined by TCPA (hereinafter collectively referred to as "customers") nationwide. An "activation check" is a "live" or negotiable check made payable to the prospective customer that, upon being deposited by that prospective customer, activates the customer's account and is treated as that customer's purported agreement to purchase a PBL and related services from Directory Billing.

12. Directory Billing's solicitation mailing consists of a window envelope with the "activation check" showing through. The envelope typically states "Check Enclosed." The check is for a small amount, such as \$3.25, and is made payable to the prospective customer. Nowhere on its face does the check indicate that deposit by the prospective customer will be construed by Directory Billing as a binding contract for the future payment for on-going PBL services.

13. On the back of Directory Billing's "activation check" is a pre-printed endorsement statement which reveals, albeit unclearly and inconspicuously, that by depositing the check, the prospective customer allegedly agrees to pay a monthly or annual fee to Directory Billing, and that this fee will likely be collected through the customer's local telephone bill or the bank

account into which the “activation check” has been deposited.

14. Also, contained within the Directory Billing solicitation envelope, folded behind the “activation check” are one or two flyers which advertise the PBL and provide the “terms of service” if a prospective customer were to order the services. The Directory Billing mailing also often included advertising inserts for other, unrelated products or services.

15. Directory Billing used the above-described solicitation method and practice from early 2004 through early Spring, 2006.

16. Directory Billing has represented to Plaintiff that it ceased mailing any advertising containing an “activation check” in March, 2006.

17. Directory Billing mailed millions of solicitations containing “activation checks” to purported customers, including but not limited to businesses and organizations of every size and nature, as well as non-profit organizations, schools and universities, and churches across the country, including into the State of Tennessee.

18. Many thousands of the purported customers, including businesses, churches and other organizations across the country and within the State of Tennessee, deposited these “activation checks” and did so unaware of the fact that, by their deposit they entered into any obligation towards Directory Billing. Purported Customers thus deposited the “activation checks” by mistake or error and in the absence of any deliberate decision to purchase any of Directory Billing's advertising services.

19. Many recipients which deposited Directory Billing’s “activation checks” did not notice, and, therefore, were not aware of either the content of the statement placed on the reverse side of the “activation check” or the other information enclosed in the solicitation mailing.

20. Some recipients of the Directory Billing mailing assumed the “activation check”

related to some other business, such as an existing advertising purchase with a local yellow pages publisher; others handled the check in accordance with established lock-box procedures for processing all incoming payments.

21. As a result, many of the above-referenced purported customers, including businesses, churches and other organizations, deposited Directory Billing's "activation checks" without the knowledge they were entering into any transaction and without any intention to purchase the PBL services.

### **Unorthodox Billing Channels**

22. Following Directory Billing's determination that an "activation check" had been deposited, they posted an enhanced listing (the PBL) in their on-line yellow pages and began the billing process for collecting monthly charges for their PBL services through several unexpected billing channels.

23. The monthly PBL charges billed by Directory Billing have varied since 2004, but are currently \$49.95.

24. Directory Billing has, for several years, billed for monthly charges through Local Exchange Carriers, or the customer's local telephone company's bill, also referred to as "LEC" billing. Where LEC billing is the billing channel, the monthly charge for Directory Billing's PBL services appear in various formats in the customer's telephone bill, reflecting an additional miscellaneous charge added to that telephone bill. After the customer pays their telephone bill to the LEC, the billed amount is then remitted by the LEC, through a third party billing aggregator, to Directory Billing, subject to various fees, reserves, and hold-backs.

25. Directory Billing has also been using a second billing channel which presents their monthly charges directly to the customer's bank account (the account into which the customer

had originally deposited the “activation check”). Working through automated clearing houses, Directory Billing submits recurring direct bank account withdrawals to those bank accounts. This process is also referred to as the “ACH” billing channel. Directory Billing's charges appear in various formats on the customer's bank account statements, reflecting the customer's bank having paid the monthly fee to Directory Billing. The ACH processor receives payment from the customer's bank and then remits the payment to Directory Billing, subject to various fees, reserves, and hold-backs.

26. Such billing practices continue to the present time across the country, including within the State of Tennessee.

27. Many purported customers including businesses, churches and other organizations, including entities within the State of Tennessee, have, upon discovering they were being billed for Directory Billing's PBL services, taken measures to cancel those charges or close the accounts. Indeed, a significant number of accounts have been closed due to customer cancellation since Directory Billing began selling its PBL services through the use of "activation checks."

28. However, many purported customers, including businesses, churches and organizations across the country, from within the State of Tennessee and elsewhere, have been billed through the above-described billing channels by Directory Billing for its PBL services without their knowledge or actual consent for varying periods of time since early 2004 and in some cases continue to be billed to the present time.

29. Based on the foregoing allegations, the State of Tennessee contends that the purported customers including businesses, churches, and organizations which deposited “activation checks” sent to them by Directory Billing were likely to have done so by mistake and

without reaching any agreement on their behalf to purchase Directory Billing's advertising services, and were unaware that their deposit would subject their business or organization to monthly billings by Directory Billing.

30. Based on the foregoing allegations, the State contends that some purported customers, including businesses, churches and organizations, paid monthly charges to Directory Billing through LEC or ACH billing channels unaware of the inclusion of those charges in their local telephone bill or the debiting of those charges from their bank accounts. Thus, some businesses, churches and organizations have paid Directory Billing for PBL services without their knowledge or consent for varying periods of time due to the billing methods employed by Directory Billing following the initial solicitation through an "activation check."

31. Based on the above allegations, the State contends that as a result of Directory Billing's initial use of an "activation check" to solicit the sale of its PBL services, followed by its use of unorthodox billing channels for the collection of monthly recurring charges, businesses, churches and other organizations within the State of Tennessee have likely been unaware of any agreement to purchase the PBL services or the fact that they have paid or are paying Directory Billing for such services.

32. Customers have suffered ascertainable losses as a result of the acts and practices alleged herein.

## **VI. VIOLATIONS OF LAW**

### **TENNESSEE CONSUMER PROTECTION ACT: UNFAIR AND DECEPTIVE ACTS**

33. Plaintiff restates, realleges, and incorporates by reference the allegations contained in each of the preceding paragraphs as though fully set forth herein.

34. Directory Billing's PBLs and related advertising services constitute "commerce"



and "trade" within the meaning given to those terms in Tenn. Code Ann. § 47-18-103(11).

35. From approximately February, 2004, through early Spring, 2006, Directory Billing, through its officers, members, directors, employees, agents, servants, representatives, and others acting on its behalf or at its direction, have engaged in the act, use and employment of deception, misrepresentation, unfair practice, and the concealment, suppression, and omission of material facts in connection with the advertisement, offering for sale, and sale of services in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(3), (b)(22) and (b)(27). In particular, Directory Billing has, inter alia, engaged in the following unfair or deceptive acts:

A. Engaging in deception in connection with the sale of a service by using writing, graphical elements or other indicia which is likely to create the guise of, and to be understood by the recipient thereof, to represent, a pre-existing business relationship with Directory Billing, when that is not in accord with the facts.

B. Engaging in deception by presenting an Activation Check in such a manner and under such circumstances as to have the capacity to cause payees, or recipients thereof, to believe that the Activation Check is a refund, a rebate, or a payment of some nature other than the means by which the recipient or payee is to accept an offer for the sale of goods and services.

C. Suppressing material fact by placing information which would disclose the purpose of the Activation Check, or the obligation to which a payee commits by depositing the same, in locations which are less likely to be seen, read, or recognized as having such importance by the recipient of the Activation Check, or any agent thereof who is likely to receive and take any action with respect to the Activation Check.

D. Employing an unfair or deceptive practice by utilizing as the method of

acceptance of an offer for the sale of service a device which, if treated in a manner consistent with common business practices, such as the utilization of a lockbox or similar policies mandating the prompt deposit of any negotiable instruments or other payments received by the payee, risks obligating that payee to payment for goods and services that the payee has not knowingly agreed to purchase, when such practice is likely to cause substantial harm.

E. Employing an unfair or deceptive practice by submitting bills, and collecting payments for service, through an unrelated billing mechanism or billing channel which is unexpected by the customer, such as through a customer's telephone bill or through direct withdrawals from the customer's bank account, without that customer's knowing consent to the specific method of payment, which practice is unlikely to be detected by the customer and is highly questionable and likely to cause ascertainable losses.

F. Offering through the mail or by other means, a check that contains an obligation to advertise with a person upon endorsement of the check in violation of Tenn. Code Ann. § 47-18-104(b)(43).

G. Defendant's acts or practices, as described in this Complaint, cause likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, including Directory Billing's charge in the billing statements from local telephone companies, in violation of Tenn. Code Ann. 47-18-104(b)(2).

H. Defendant's acts or practices, as described in this Complaint, have caused a likelihood of confusion or of misunderstanding as to the affiliation, connection or

association with, or certification by another, including, but not limited to, by including the "activation check" solicitation with the billing statements from local telephone companies, in violation of Tenn. Code Ann. 47-18-104(b)(3).

I. Defendant's activation check and related solicitations, without prominent, clear and conspicuous disclosures, are not bona fide and are in violation of Tenn. Code Ann. 47-18-104(b)(22) because the first contact is secured by deception.

J. Defendant's acts and practices, as described in this Complaint, have the tendency or capacity to mislead consumers about material facts, including, but not limited to, the fact that by participating in the offers, customers would incur additional charges or obligations and, thus, constitute deceptive and unfair acts and practices and therefore, are unlawful pursuant to Tenn. Code Ann. 47-18-104(b)(27).

## **VII. DEMAND FOR RELIEF**

WHEREFORE, Plaintiff, the State of Tennessee, by its Attorney General and Reporter, pursuant to the Attorney General's general statutory authority at Tenn. Code Ann. § 48-18-108 and this Court's equitable powers, prays that:

A. This Complaint be filed without cost bond as provided in Tenn. Code Ann. 47-18-108(b)(4) and Tenn. Code Ann. 47-18-116;

B. Process issue and be served upon the Defendant requiring it to appear and answer this Complaint;

C. This Court adjudge and decree that Defendant has engaged in aforementioned acts and practices which violate the Tennessee Consumer Protection Act of 1977, specifically finding that Defendant has violated the provisions of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(3), (b)(22), (b)(27), and (b)(43);

D. This Court permanently enjoin, pursuant to Tenn. Code Ann. § 47-18-108(a)(4), Directory Billing and its officers, members, directors, employees, agents, servants, representatives, and others acting on its behalf or at its direction, from engaging in those specific acts and violations of law referenced in this Complaint in, to, or from the State of Tennessee;

E. This Court make such orders or render such judgments against the Defendant as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977, and require that Defendant be taxed with the cost of distributing and administering the same under Tenn. Code Ann. § 47-18-108(b)(1);

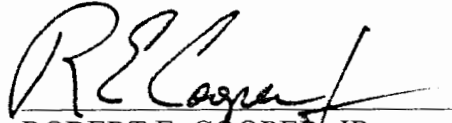
F. This Court adjudge and decree that Defendant Directory Billing pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation of the TCPA to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

G. This Court adjudge and decree that Directory Billing pay to Plaintiff the reasonable and necessary costs of the investigation and prosecution of this action, including attorneys' fees, as provided for by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

H. This Court adjudge and decree all costs in this cause to be taxed to Directory Billing; and

I. This Court grant to Plaintiff any and all such additional and further orders as this Court deems just or otherwise proper herein.

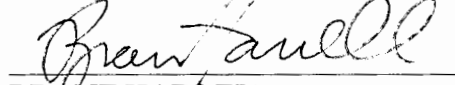
Respectfully submitted,



ROBERT E. COOPER, JR.

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*Attorneys for the Plaintiff, State of Tennessee*

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I hereby certify that this is a true copy  
of original instrument filed in my office  
this 3<sup>rd</sup> day of March 20 08

RICHARD R. ROOKER Clerk

By  Deputy Clerk